

APPROVED

**STATE ADVISORY COUNCIL ON THE
EDUCATION OF CHILDREN WITH DISABILITIES**

April 13, 2007

**Carmel Educational Service Center
Indianapolis, IN**

ADVISORY COUNCIL MEMBERS PRESENT:

B. Marra, D. Schmidt, G. Bates, S. Beasley, R. Burden, C. Endres, K. Farrell, D. Geeslin, J. Hammond, R. Kirby, M. Johnson, B. Lewis, J. Nally, M. Ramos, C. Shearer, J. Swaim, S. Tilden,

ADVISORY COUNCIL MEMBERS NOT PRESENT:

D. Downer, C. H. Hansen, B. Henson, K. Mears, L. Teninty, B. Kirk, J. Swiss, T. Wyatt

DEPARTMENT OF EDUCATION (DEL) STAFF PRESENT:

P. Ash, N. Brahm, S. Knoth, B. Reynolds, K. Bassett,

GUESTS:

Julia Prather, West Central Joint Services (WCJS); Jill Slavin, MSD Pike Township; Joan Shepherd, MSD Pike Township; Kathy Oehler, MSD Pike Township; Barb Garrett, WCJS/ MSD Pike Township; Jay Arthor, MSD Pike Township; Nathaniel Jones, Superintendent, MSD Pike Township; Scott Robison, WCJS/Zionsville; N. Andrew Wagner, Superintendent, Speedway Schools; Mary Ann Dewan, Assistant Superintendent, MSD of Wayne Township

VISITORS

Susan Lockwood (IDOC), Patricia Pierce (NISEC), Margaret Jones (Parent), Liz Freeman Floyd (Autism Society/Parent), Cindy Lawrence (ISD Outreach)

INTERPRETERS:

Rebecca Madigan and
Randy Nicolai

MEETING

D. Schmidt opened the meeting at 8:35 a.m.

MINUTES

The minutes from the March 2, 2007, meeting, were approved with no amendments.

BUSINESS

- Dates, times for future meetings and Locations

P. Ash discussed additional dates for future meetings of SAC. The following revised calendar for the State Advisory Council is as follows:

May 4, 2007

May 18, 2007

June 1, 2007

June 15, 2007

*NO JULY MEETING

August 8, 2007

September 7, 2007

October 5, 2007

November 2, 2007

December 14, 2007

All meetings will be held at the Carmel Clay Education Services Center located at 5201 East 131 Street, Carmel, IN 46033. Meetings will begin at 8:30 a.m.

- Old National Trail to present

P. Ash stated that Old National Trail will discuss a change in their planning district at the May 4, 2007 meeting.

- Quorum discussion

N. Brahm discussed her research on quorums. Because the council is only preliminarily approving proposed changes to Article 7, meetings can begin without a quorum being present. Final votes will require the affirmation of a majority of the council members.

PUBLIC COMMENT (Audience comments, if any)

Pat Pierce responded to public comments urging the elimination of the Board of Special Education Appeals (BSEA) from Indiana's due process procedures. She

advised the council to maintain the BSEA. She discussed data regarding appeals to the BSEA. According to her data, only 12 out of 88 hearing officer opinions were reversed on appeal. P. Ash described the one and two-tier system for due process. P. Pierce requested new data regarding how many BSEA opinions were reversed in federal district court. N. Brahm explained that this is difficult to track because federal district court opinions are rarely published. P. Pierce noted that in her opinion the BSEA is fair, cost effective, and timely.

ARTICLE 7 DISCUSSION

RULE 20 PROGRAM PLANNING AND EVALUATION

511 IAC 7-20-1: Comprehensive Plan

N. Brahm referred to guidelines for comprehensive plans. She stated that the mark-up now reflects the guidelines that were discussed at the March 2, 2007 meeting.

G. Bates questioned comprehensive plans and charter schools. He recalls that they had to come before the SAC when a new school opened. He was concerned that some of the new charter schools are not connected to a comprehensive plan. C. Endres said that she could contact K. Stewart with the charter schools division at IDOE to get an update on new charter schools that have opened in the last eight months.

R. Burden moved to accept proposed language. S. Tilden seconded

10 Approved; 0 Opposed; 0 Abstained.

RULE 29 DISCIPLINE PROCEDURES

511 IAC 7-29-2: Expulsion

N. Brahm discussed the rules of expulsion. N. Brahm recommended the same changes that were made at the last meeting regarding notice to parents be added to this language. R. Kirby and K. Farrell concurred. D. Schmidt stated that we need to make sure that the recurrence of the student's behavior does not occur. Discussion ensued. B. Lewis motioned to accept language. R. Kirby seconded the motion.

K. Farrell asked for clarification: if an expulsion is continued, does an FBA have to be in place and implemented for the child? N. Brahm asked the SAC if they would like to change sections 1, 2, and 5 to flow in a more chronological manner. P. Ash stated that he feels the discipline section is the hardest to understand. K. Bassett added that because of the location of section 5 (manifestations), the reader is forced to flip back and forth in Article 7. K. Farrell said that the council

should vote on the matter. R. Burden suggested tabling the discipline rule until a reorganized draft is completed.

B. Lewis motioned to table. R. Burden seconded.

B. Lewis inquired whether charter schools have to follow the discipline rule. N. Brahm noted that charter schools are public schools in Indiana, so Article 7, including the discipline rule, applies to charter schools.

14 Approved; 0 Opposed; 0 Abstained

RULE 30 DUE PROCESS PROCEDURES

N. Brahm discussed that most language in this section has not been changed.

511 IAC 7-~~3045~~-21: Complaints

(Note: the order of the complaint and mediation sections has been reversed.)

N. Brahm discussed the complaint timelines via a chart prepared by the DEL. K. Farrell asked about the 7 day timeline for reconsiderations. She stated that 10 days would be more reasonable than 7 days. G. Bates asked what is contained in a complaint report. P. Ash said that reports contain the issues, findings of fact, conclusions of law and what changes need to be made (if any). P. Ash said that the DEL posts the final complaint reports on the DEL website. He stated that Indiana is one of the only states to have a reconsideration process within the 60 day timeline. G. Bates asked whether a report contains corrective action that requires that school to respond. P. Ash confirmed that this is the case.

K. Farrell stated her concern regarding the 7 day timeline for reconsideration if a complaint report is received right before a winter or summer break. N. Brahm stated that is when an extension could take place. K. Farrell asked who would ask for the extension. P. Ash said that is usually left up to the DEL, but anyone could ask for the extension. K. Bassett noted that extensions have been granted in the past because of winter and summer breaks. N. Brahm noted that the DEL has to report to OSEP whether complaints are rendered in 60 days.

N. Brahm suggested that SAC review the entire rule. K. Farrell concurred. N. Brahm proceeded to review the rule. B. Lewis questioned why LEAs cannot file complaints when parents are not in compliance due to educational neglect on the part of the parent. S. Beasley stated that there is no complaint procedure for the LEA against the parent. N. Brahm continued review of the rule. N. Brahm stated that K. Bassett is working on a model form for complaints. N. Brahm said that the model form for complaints will be presented at the public meetings.

N. Brahm continued review of the rule. S. Tilden stated there are other avenues of dispute resolution available. He feels that the federal language should stay in the rule. Discussion ensued. N. Brahm stated that she will have to discuss

these other dispute resolution mechanisms with B. Marra. K. Farrell asked who conducts training of complaint investigators. P. Ash said that training is conducted by the DEL and national seminars.

S. Beasley asked what happens if the parent sends their complaint to the LEA, but the LEA does not respond promptly. When does the timeline begin? N. Brahm explained that the parent must simultaneously send the complaint to the LEA and the DEL. B. Lewis said that there are two timelines running at the same time. There is the division's 60 day timeline and the LEA's 10 day timeline. C. Shearer inquired as to how the parent knows to send it to the division and the LEA. N. Brahm said that it would be explained in the notice of procedural safeguards document distributed to parents. Discussion ensued.

N. Brahm continued review of the rule. K. Farrell asked that the school be given 10 days or 7 instructional days to ask for reconsideration. N. Brahm explained that a 7 instructional day timeline would preclude DEL from complying with the 60 day federal timeline. K. Farrell would like the record to show that she supports 10 instructional days. Discussion ensued as to what has been done in the past. P. Ash stated that in the past when a break from school is involved, an extension of time is granted as stated under the "exceptional reason (5)(A) of the rule. This is documented and included in the report.

N. Brahm continued explaining the changes in the complaint section. R. Burden expressed his concern regarding the new federal language that allows parties to mediate a complaint. He was not sure how one could mediate a compliance issue. S. Tilden asked if the complainant is notified that the complaint has been finalized. P. Ash said that the investigator sends out a final report.

K. Farrell motioned to accept language with amendments discussed. J. Swaim seconded.

R. Burden indicated that individuals do not have a good sense of what due process is and what it isn't. He would like opportunities for the SAC to work with DEL as the procedures are being developed. N. Brahm made note that R. Burden, S. Tilden and C. Shearer would be willing to meet with B. Marra to discuss how parents can be educated on their rights.

14 Approved; 0 Opposed; 1 Abstained

511 IAC 7-3045-12: Mediation

N. Brahm discussed the language and suggestions at 511 IAC 7-45-2(g). You have to sign a legally binding agreement if you reach resolution through a mediation session. States have the option of using the complaint process to enforce mediation agreements. K. Farrell asked what options parents have if the mediation agreement is not being followed. N. Brahm said that now they are able to file a complaint or go to court. B. Lewis questioned how would you file a complaint if you are not able to include issues in the mediation? P. Ash explained that it is the discussions that would be confidential, not the actual

issues. K. Bassett concurred. K. Farrell said that the complaint process should be available to parents as a mechanism to enforce mediation agreements. N. Brahm stated that she would add this language under section (h). P. Ash cautioned that the language should make clear that using the complaint process was an option, and not an administrative remedy that has to be exhausted.

N. Brahm discussed language at subsection (d)(6)(3), which precludes a person from serving as a mediator if they work for a public agency that receives Part B funding. K. Farrell asked what individual or agency would be receiving Part B funds. N. Brahm stated that there are some agencies that have Part B fund grants. Discussion ensued. SAC advised that they would prefer to not include the proposed language at (3).

N. Brahm explained that at subsection (e), geographic region was taken out. N. Brahm also explained the changes in section (i).

S. Tilden motioned to accept the rule with the amendments discussed. M. Johnson seconded.

14 Approved; 0 Opposed; 0 Abstained.

511 IAC 7-30-3: Due process hearings

N. Brahm stated that most of the changes regarding due process hearings went into effect on July 1, 2005. N. Brahm explained several charts setting forth the due process timelines, and she also explained the DEL's model form for requests for due process.

R. Burden asked about the 10 day timeline for prior written notice. N. Brahm stated that under IDEA, once the school has issued prior written notice, the school can begin to act unless the parent requests due process. B. Marra stated that this is not the case under Article 7 because the parent must consent to change of placement. Discussion ensued.

N. Brahm referred back to the Due Process Request Timelines. She noted that if a school requests due process, a resolution session does not need to be held.

N. Brahm discussed Parent Request for Expedited Due Process. The hearing timeline is different if it is an expedited hearing. N. Brahm stated that calendar days and instructional days are included in this timeline.

N. Brahm also explained the timeline for LEA Requests for Expedited Hearings. These hearings are requested when an LEA believes that a student poses a danger to himself or others.

BSEA

N. Brahm reviewed the role of the Board of Special Education Appeals, the procedures for appeals of hearing decisions, and expenses related to the BSEA.

N. Brahm stated that the SAC has received comments from the public with regard to the BSEA. She went on to summarize, via a PowerPoint presentation, comments that have been received by DEL.

P. Pierce reiterated her comments from earlier in the day. She stresses that the BSEA does not delay the process; it is efficient. She also noted that the BSEA listens and makes correct decisions. She stated that the BSEA may save the parent costs of a federal hearing.

M. Johnson asked this: if the BSEA is eliminated, would parents go straight to court? N. Brahm stated yes. M. Johnson asked whether parents that go to BSEA represent themselves. B. Marra stated that there have rarely been parents that have not had attorneys. Discussion ensued.

R. Burden stated that he has heard concern that oral argument rarely takes place at the BSEA tier, and concern that the BSEA usually upholds the IHO decision. C. Endres stated she believed the BSEA is effective since so few of their opinions are overturned by the courts. She explained that anywhere from 12 to 16% of our families in Indiana are living in or have lived in poverty. These families would not be able to afford attorneys, thereby denying them a right to due process. S. Tilden asked what role the SAC might be able to play to help these families that are in effect disenfranchised. S. Tilden discussed the middle class families' awareness of the law and this actually might push schools and help (indirectly) all families – including those from low incomes. R. Kirby asked about the cost of a hearing. B. Marra said that the cost of the hearing is paid by the school. The parent is responsible for their attorney fees. J. Nally stated that his insurance requires \$15,000.00 per case to represent IDOC. N. Brahm explained that if the parent prevails, the parent can recoup their attorney fees from the school. R. Kirby stated that these issues are not able to be solved by the SAC.

ARTICLE 7 COMMENTS FROM THE PUBLIC

No comments were made.

MSD PIKE TOWNSHIP COMPREHENSIVE PLAN

Julia Prather and Jill Slavin presented to the SAC regarding the reorganization and restructuring proposal for West Central Joint Services (WCJS) and the MSD of Pike Township (PIKE). J. Prather began with a historical overview (timeline) of how the decision points to date have been made (primarily influenced by the large student growth in all of the corporations being served).

J. Nally asked whether Pike had previously withdrawn from WCJS. J. Prather stated that they had begun the process in 2003. Mr. Jones, Superintendent of

Pike, explained that Pike had requested to withdraw in 2003, but decided to delay withdrawal.

S. Tilden asked how students in private schools will be served. J. Slavin stated that all of the private schools that are in the area will be served by Pike. J. Slavin stated that with the exception of visually impaired, hearing impaired and orthopedic impairment, Pike has been providing all services. J. Prather stated that Pike has been allowed to absorb some of WCJS's staff because of their early withdrawal. The students were not moved, just staff. G. Bates asked whether low incident students were being bussed to a different area. J. Prather said that Speedway and Monroe Gregg are the only districts that bus low incident students: MSD of Wayne Township provides for Speedway, and Mooresville Consolidated School Corporation provides for Monroe Gregg. J. Prather said the parents' concerns may evolve over time as they eliminate many of the concerns that have occurred because of the withdrawal. Continued training of staff is taking place to better serve those students. K. Farrell complimented the directors on the cooperative's efforts and their responsibilities to the children.

R. Burden moved to approve both proposals. Seconded by M. Johnson.

J. Slavin then wished to thank WCJS.

14 Approved; 0 Opposed; 0 Abstained.

OTHER BUSINESS

B. Marra reiterated the quorum requirement and the extra dates for meetings.

MEETING ADJOURNED AT 3:05 P.M.